

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 217.6, 217.34, and 252B.5, the Department of Human Services proposes to amend Chapter 95, “Collections,” and Chapter 98, “Support Enforcement Services,” Iowa Administrative Code.

These amendments adjust rules on services provided by the Child Support Recovery Unit for collection of court-ordered support through state and federal offsets to do the following:

- Align to existing provisions in the Iowa Code by removing the criterion of failure to pay current support and delinquent support for 12 consecutive months. This change will broaden the pool of obligors subject to offset and should result in additional collections for families and the state of Iowa.
- Improve customer service by streamlining the return of excess offset funds and offset funds belonging to an unobligated joint owner or unobligated spouse. Verbal requests for the release of the portion of the refund belonging to an unobligated spouse will be allowed. The obligor will not be required to sign a form before excess funds are released.
- Improve customer service by streamlining the notice process and allowing for communication by means other than U.S. mail.
- Align the rules to the streamlined electronic process to notify the Department of Administrative Services when the Department of Human Services issues a preoffset notice.

These amendments do not provide for waivers in specified situations because state statutes, federal statutes, and federal regulations require the Department to offset many government payments owed to individuals for the payment of past-due support. The Department has no authority to waive statutory provisions.

Any interested person may make written comments on the proposed amendments on or before September 14, 2010. Comments should be directed to Mary Ellen Imlau, Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to policyanalysis@dhs.state.ia.us.

The Department will also hold public hearings for the purpose of receiving comments on these proposed amendments at the following times and locations:

Meeting Room A Burlington Public Library 210 Court Street Burlington, Iowa	September 15, 2010 9:30 to 10:30 a.m.
Conference Room A, Second Floor 6200 Aurora Avenue Urbandale, Iowa	September 15, 2010 10 to 11 a.m.
Suite 225, Second Floor Commerce Building 520 Nebraska Street Sioux City, Iowa	September 16, 2010 9 to 10 a.m.
Liberty Room, First Floor Mohawk Square	September 16, 2010

Persons with disabilities who require assistive services or devices to observe or participate should contact the Bureau of Policy Coordination at (515)281-8440 in advance of the scheduled date to request that appropriate arrangements be made.

These amendments are intended to implement Iowa Code sections 8A.504, 252B.3, 252B.4 and 252B.5(4).

The following amendments are proposed.

ITEM 1. Amend rule 441—95.6(252B) as follows:

441—95.6(252B) Offset against state income tax refund or rebate. The department will make a claim against an obligor's state income tax refund or rebate when a support payment is delinquent as set forth in ~~rule 11—40.1(8A)~~ 11—Chapter 40. A claim against an obligor's state income tax refund or rebate shall apply to support which the department is attempting to collect.

95.6(1) By the first day of each month, the department shall submit to the department of administrative services a list of obligors who:

~~a. Are are delinquent at least \$50 in support payments; and~~

~~b. Have not paid the current support obligation plus a monthly payment on the delinquency in each of the preceding 12 months.~~

95.6(2) When the department claims an obligor's state income tax refund or rebate, the department shall ~~mail~~ send a preoffset notice to the obligor to inform the obligor of the amount the department intends to claim and apply to support. The department shall ~~mail~~ send a preoffset notice when:

a. The department of administrative services notifies the department that the obligor is entitled to a state income tax refund or rebate; and

b. The obligor has a delinquency of \$50 or greater; ~~and~~

~~c. The obligor has not paid the current support obligation plus a monthly payment on the delinquency in each of the 12 months preceding the month in which the preoffset notice is mailed.~~

95.6(3) When the obligor wishes to contest a claim, a written request shall be submitted to the department within 15 days after the preoffset notice is ~~mailed~~ sent. When the request is received within the 15-day limit, a hearing shall be granted pursuant to rules in 441—Chapter 7.

95.6(4) The spouse's proportionate share of a joint return filed with an obligor, as determined by the department of revenue, shall be released by the department of revenue unless other claims are made on that portion of the joint income tax refund. The request for release of a spouse's proportionate share shall be ~~in writing and~~ received by the department within 15 days after the ~~mailing~~ date of the preoffset notice.

95.6(5) ~~Rescinded IAB 4/30/03, effective 7/1/03.~~ The department shall refund any amount incorrectly offset to the obligor unless the obligor agrees in writing to apply the refund of the incorrect offset to any other support obligation due.

95.6(6) The department shall notify an obligor of the final decision regarding the claim against the tax refund or rebate by ~~mailing~~ sending a final disposition of support recovery claim notice to the obligor.

95.6(7) Application of offset. Offsets shall be applied as provided in rule 441—95.3(252B).

This rule is intended to implement Iowa Code sections 8A.504, 252B.3, and 252B.4 and 252B.5(4).

ITEM 2. Amend paragraph **95.7(8)“b,”** first unnumbered paragraph, as follows:

~~c. The department shall refund the amount incorrectly set off to the obligor unless the obligor agrees in writing to apply the refund of the incorrect offset to any other support obligation due. Prior to the receipt of the refund, the obligor shall sign Form 470-2082, Adjustment of Federal Tax or Nontax Offset Agreement, agreeing to repay any amount of the offset the Department of the Treasury later requires the department to return.~~

ITEM 3. Amend subrule 98.81(2) as follows:

98.81(2) Notification of offset. ~~The department shall mail a preoffset notice to an obligor and the department of administrative services within~~ Within ten days of receiving notification from the department of administrative services that the obligor is entitled to a payment, ~~the department shall:~~

a. Send a preoffset notice to the obligor. The preoffset notice shall inform the obligor of the amount the department intends to claim and apply to the support obligation and shall contain all information required by Iowa Code subsection 8A.504(2) and 11—subrule 40.4(4).

b. Notify the department of administrative services that the preoffset notice has been sent to the obligor.

ITEM 4. Renumber subrules **98.81(4)** to **98.81(6)** as **98.81(5)** to **98.81(7)**.

ITEM 5. Adopt the following new subrule 98.81(4):

98.81(4) Joint owner. A joint owner's proportionate share of the payment, as determined by the department of administrative services, shall be released unless other claims are made on that portion of the payment. The department must receive a request for release of a joint owner's share within 15 days of the date of the preoffset notice. The request may be made by either owner.

ITEM 6. Amend renumbered subrule 98.81(5) as follows:

98.81(5) Final disposition of offset. The department shall notify an obligor of the final decision regarding the claim against the offset by ~~mailing~~ sending a final disposition of support recovery claim notice to the obligor.

ITEM 7. Amend renumbered subrule 98.81(7) as follows:

98.81(7) Percentage of payment offset. The amount of offset shall be 50 percent of the total payment due the obligor, unless the payment results from lottery winnings, from gambling winnings, or from a payment for a claim under treasurer of state rules on unclaimed property at 781—Chapter 9, in which case the amount of offset shall be 100 percent of the payment. The amount taken shall not exceed the delinquent amount due on the case owed by the obligor.